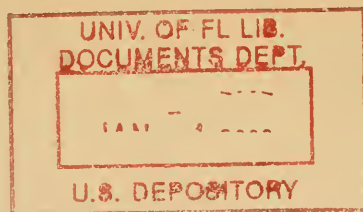


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THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY

DECISION NO. 1

IN THE MATTER OF

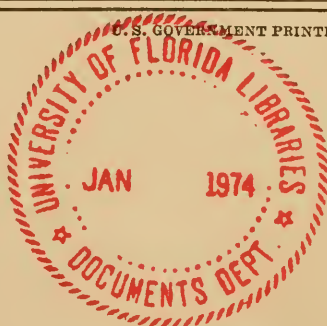
FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 2004

Michael C. Regan, Claimant

Charles J. Katzenstein, Attorney

CHANDLER P. ANDERSON,
American Commissioner.



U.S. GOVERNMENT PRINTING OFFICE: 1928

MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON
American Commissioner

(II)

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IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

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Michael C. Regan, Claimant

Charles J. Katzenstein, Attorney

The above named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by him to his attorney, Charles J. Katzenstein, of New York City, N. Y., as compensation for whatever services have been rendered by the said attorney on behalf of and with the authority of the said claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928".

The claimant has objected to the amount of the fee asked by the attorney on the ground that it is excessive, and the attorney has been notified of the filing by the claimant of this request that a reasonable fee be fixed, and the attorney, in response to a request by the American Commissioner, has filed with him several affidavits, giving the information which the attorney desires to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been brought to the attention of the claimant, who

has filed an affidavit in reply, a copy of which has been transmitted to the attorney.

The amount of the fee asked by the attorney as compensation for his services in this matter is three thousand dollars (\$3,000).

The award rendered by this Commission on behalf of the claimant is made up of two items, one for the sum of \$1,500 with interest thereon at the rate of five per cent per annum from November 11, 1918, to the date of payment, and the other for the sum of \$5,000 with interest thereon at the rate of five per cent per annum from November 1, 1923, to the date of payment.

The item of \$1,500 represents the value of personal property belonging to the claimant which was lost through the destruction of two vessels on which the claimant had shipped as Chief Steward, and which were sunk by German submarines, and the item of \$5,000 represents damages for personal injuries suffered by the claimant in consequence of the German submarine attack on one of the above mentioned vessels.

On April 9, 1924, the claimant, after several conferences with the attorney, signed a letter to him retaining him to prosecute the above mentioned claim for personal injury and loss of property, and agreeing to pay him \$25.00 retainer, which was paid, and one-fourth of the amount recovered by way of suit or compromise. These terms of employment were accepted by the attorney.

The chronological sequence of events in this case, as shown by the record, is as follows:

It appears that before the claimant employed this attorney to prosecute his claim there had been some delay or neglect on the part of the claimant in filing his claim with this Commission, and some question had arisen on technical grounds as to whether or not it could be treated as filed in time for this Commission to take jurisdiction. This difficulty was overcome with the cooperation of the Agent of the United States before this Commission and through the courtesy of the Agent of Germany, and on April 4, 1928, Mr. Regan was notified at a conference which he had with two members of the legal staff of the United States Agency that arrangements had been made for listing his claim. On the same date a letter was addressed to him by the American Agent instructing him as to the evidence necessary to sustain his claim. He was requested to submit in duplicate sworn statements showing his American citizenship and

describing in detail the nature of the damages suffered, and setting forth the articles of property lost and their value, and, as to his personal injuries, showing his physical condition prior to the date when they were sustained, and, as to his American citizenship, duplicate certified copies of his birth certificate or an affidavit in duplicate from someone who was in a position to swear to the facts. Corroborative documentary evidence in duplicate was also called for in the form of affidavits as to the lost personal property belonging to him and its value, and also affidavits from physicians establishing his personal injuries and his physical condition prior thereto.

This letter was brought by the claimant to the attention of his attorney, and it is evident, accordingly, that on April 9, when the claimant employed Mr. Katzenstein to act as his attorney, both he and the attorney were fully informed as to exactly what was required to be done by them in order to establish his claim before this Commission.

The record shows that Mr. Katzenstein immediately thereafter proceeded with great energy and despatch to secure the evidence called for in the prosecution of this claim. The attorney states in his affidavit that he felt this case should be given first preference in his office and that the claim should be filed as promptly as possible. He further states that with this end in view he spent considerable time in preparing necessary papers to the neglect of other matters in his office. He hired an assistant who was a notary public in order that he might interview the prospective witnesses, obtain their statements, and have them sworn to after they had been prepared in affidavit form by the attorney. The amount of time and work involved in carrying out this program is stated in detail in the attorney's affidavit and also in an affidavit made by the special assistant, which has been submitted in this proceeding. It is evident from the record of what was done in securing these affidavits that the services rendered were of great value in the prosecution of the claim, and represent the expenditure of a very considerable amount of time and effort by the attorney and his office force.

As a result of these efforts on the part of the attorney, he was able to write to the American Agent on April 21, 1924, inclosing in duplicate, as to both of the items of this claim, the claimant's petitions verified on April 11, schedules of the personal property lost and its

value, certificates of the claimant's seaman's service, and seventeen affidavits verified between April 11 and April 17 establishing the claim both as to personal property and personal injuries. It is also to be noted that, as appears from the later proceedings, the documents thus filed were found to be sufficient to establish the claim and no further evidence of any kind was called for by either the American or the German Agent.

On April 26 the American Agent wrote to the attorney informing him that the German Agent was prepared to agree to an award in the sum of \$1,500 with interest at the rate of five per cent per annum from November 11, 1918, to the date of payment for the loss of personal property, and the further sum of \$2,000 with interest at the rate of five per cent per annum from November 1, 1923, to the date of payment for physical injuries, in settlement of this claim.

Upon receipt of this letter the attorney conferred with the claimant, and on the advice of the attorney the claimant authorized him to reply that the sum of \$2,000 for personal injuries was inadequate, and suggested that this amount be increased to \$5,000, which the claimant would be prepared to accept, and also requesting that the offer of \$1,500 for personal property should be increased to \$1,664.

On May 1 the American Agent informed the attorney that the German Agent accepted his proposal so far as the item for physical injury was concerned, but would not increase the item for personal property.

On May 5 the attorney, after conferring with the claimant, replied to the American Agent, informing him that the proposed settlement for \$1,500 for property and \$5,000 for personal injury, with interest as previously stated, was acceptable to the claimant.

On June 10 an award was rendered by this Commission on behalf of the claimant for the amounts thus agreed upon, with interest as above stated.

It thus appears that within a period of almost exactly two months from the date upon which this attorney was employed the entire claim was prepared and presented through his efforts, and an award secured for an amount which was entirely satisfactory to the claimant. This constitutes an exceptionally expeditious record in the prosecution of claims before this Commission.

As to the amount awarded for the value of personal property lost, it should be noted that the claimant's total valuation was approxi-

mately \$1,800, but he had previously received an allowance of \$200 from his employers under his Articles of Employment, so that the award of \$1,500 for this item was only about \$100 less than the total value claimed.

As to the award of \$5,000 for personal injuries, it must be noted that in accordance with the advice of his attorney the claimant refused to agree to a settlement for \$2,000, and the soundness of the attorney's judgment in giving this advice is evidenced by the subsequent award for a larger amount.

Apparently the chief ground upon which the claimant bases his contention that the agreed fee of twenty-five per cent of the amount paid is excessive in this case is because he had to devote some of his own time and attention to going about with the assistant employed by the attorney in looking up and interviewing witnesses and obtaining information for the affidavits afterwards sworn to by them. He seems to feel that his contribution to the success of this work should be to some extent credited to him in reduction of the amount of the fee. On the other hand it must be recognized that the circumstances of the case demanded his assistance in finding and interviewing his witnesses. They were all known to him personally either as shipmates or tradesmen who sold him the property lost, or physicians who had given him professional treatment, and in most of these cases it is quite clear that the affidavits either would not have been so complete as to details or would not have been furnished at all if the claimant had not put himself in personal contact with his witnesses. Undoubtedly this was foreseen and taken into consideration by the attorney at the time he accepted this employment and fixed the amount of his fee for compensation, and he was justified by the results in calling upon the claimant for whatever assistance he was able to render in the preparation of his case.

The skill with which this claim was prepared and presented by the attorney, and the energy and success with which it was prosecuted shows that he is a practitioner of experience and sound judgment, and has devoted his best efforts to the interests of his client, who certainly had no reason to complain about the outcome of the case.

Furthermore, the claimant was not merely a seafaring man without business or worldly experience. He states in his own affidavit, submitted in this proceeding, that he is, and was at the time he made

his agreement with this attorney, an inventor and business man engaged in the buckwheat coal grates business in New York, and also that in the past he had done work for the Republican National Committee Headquarters at New York, and that during the last campaign this Committee sent him through twelve Atlantic seaboard states, and also on an important mission of inquiry in Tennessee and North Carolina, and that he had been offered a position with the Department of Justice which he declined. Furthermore, during the War he worked for the Naval Intelligence Bureau at the Barge Office in New York, and was commissioned a First Lieutenant in the United States Army. Obviously the claimant was entirely competent to look after his own interests in making a fee agreement with this attorney, and falls within the group referred to in the following extract from the Report of the Senate Committee on Finance recommending this fee fixing legislation to the Senate:

"It is expected, however, that it will not be necessary to alter amounts fixed by contract with large corporations and others fully capable of protecting their own interests. In such cases the * * * American Commissioner * * * would undoubtedly be justified in fixing the amount specified in the contracts."

The American Commissioner concurs in this view, and holds that the word "reasonable" as used in the fee fixing provisions of the Act can properly be given this interpretation. The American Commissioner also holds that the fee fixed by the agreement between the claimant and this attorney was reasonable, not merely because it seemed reasonable to the claimant and attorney at the time they entered into it with full knowledge of exactly what services were required, but also because the basis of payment was contingent upon securing and collecting an award, so that the attorney's services were rendered with the certainty of considerable delay in receiving his fee, and with the possibility that no fee might ever be paid, and, finally, the reasonableness of the fee fixed by this contingent agreement is also justified when tested by the value of the services actually rendered in this case, coupled with the fact that such fee covers all expenses incurred, for which no extra charge was to be made under the agreement, and which were greatly in excess of the \$25.00 cash payment made when the fee agreement was entered into.

Now, therefore, in the circumstances above set forth, and in view of the considerations stated in the general Jurisdictional and Admin-

istrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorney and the claimant, and of the information pertinent to the questions involved in this case on file in the records of this Commission, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Michael C. Regan, to his said attorney, Charles J. Katzenstein, in this case, the fee agreed upon and fixed in the written agreement made by the claimant with his attorney, namely, twenty-five per cent of the amount received by the claimant from the Treasury Department in payment of his award, in addition to the \$25.00 cash paid by the claimant to his attorney as a retainer, said fee to be paid by the claimant, and received by the attorney as full compensation for all services rendered in the prosecution and collection of this claim, as defined in Section 9 of the "Settlement of War Claims Act of 1928".

Done at Washington, D. C., this 10th day of October, 1928.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.





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